



**PROPOSED RULE MAKING  
(RCW 34.05.320)**

**CR-102 (7/22/01)  
Do NOT use for expedited  
rule making**

Agency: <b>Insurance Commissioner</b>		<input checked="" type="checkbox"/> Original Notice <input type="checkbox"/> Supplemental Notice to WSR _____ <input type="checkbox"/> Continuance of WSR _____												
<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR <u>02-15-173</u> ; or <input type="checkbox"/> Expedited Rule Making -- Proposed notice was filed as WSR _____; or <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4).														
<b>(a) Title of rule: (Describe Subject) WAC 284-30-390, Automobile claims, repairs, and total loss settlements</b> Purpose: Automobile total loss settlement is the single largest source of consumer inquiries and complaints received by the property and casualty section of the consumer advocacy division. The Commissioner has reviewed WAC 284-30-390 and this proposed regulation clarifies, simplifies, and makes this chapter more effective. Other identifying information: Insurance Commissioner Matter No. R 2002-06														
(b) Statutory authority for adoption: RCW 48.02.060, 48.30.010		Statute being implemented: RCW 48.02.060, 48.30.010												
<b>(c) Summary: WAC 284-30-390 is amended, clarified and presented in more-consumer friendly language. The subject is the single largest source of consumer complaints received by the property and casualty section of the consumer advocacy division.</b> Reasons supporting proposal: Automobile total loss settlement is the single largest source of consumer inquiries and complaints received by the property and casualty section of the consumer advocacy division. Considerable time is spent by the OIC and industry in administering the regulation. A clearer, more understandable regulation will be better understood by consumers and easier to implement.														
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:40%;">(d) Name of Agency Personnel Responsible for:</th> <th style="width:30%;">Office Location</th> <th style="width:30%;">Telephone</th> </tr> <tr> <td>1. Drafting..... Jon Hedegard</td> <td>PO Box 40255, Olympia, WA 98504-0255</td> <td>360-725-7039</td> </tr> <tr> <td>2. Implementation.... Scott Jarvis</td> <td>PO Box 40255, Olympia, WA 98504-0255</td> <td>360-725-7262</td> </tr> <tr> <td>3. Enforcement..... Scott Jarvis</td> <td>PO Box 40255, Olympia, WA 98504-0255</td> <td>360-725-7262</td> </tr> </table>			(d) Name of Agency Personnel Responsible for:	Office Location	Telephone	1. Drafting..... Jon Hedegard	PO Box 40255, Olympia, WA 98504-0255	360-725-7039	2. Implementation.... Scott Jarvis	PO Box 40255, Olympia, WA 98504-0255	360-725-7262	3. Enforcement..... Scott Jarvis	PO Box 40255, Olympia, WA 98504-0255	360-725-7262
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<b>(e) Name of proponent (person or organization):</b> Mike Kreidler, Insurance Commissioner <div style="text-align: right;"> <input type="checkbox"/> Private  <input type="checkbox"/> Public  <input checked="" type="checkbox"/> Governmental       </div>														
<b>(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement and fiscal matters:</b> None														
<b>(g) Is rule necessary because of:</b> <table style="width:100%;"> <tr> <td style="width:30%;">Federal Law?</td> <td style="width:10%;"><input type="checkbox"/> Yes</td> <td style="width:10%;"><input checked="" type="checkbox"/> No</td> <td rowspan="3" style="width:50%; vertical-align: top;">If yes, ATTACH COPY OF TEXT Citation:</td> </tr> <tr> <td>Federal Court Decision?</td> <td><input type="checkbox"/> Yes</td> <td><input checked="" type="checkbox"/> No</td> </tr> <tr> <td>State Court Decision?</td> <td><input type="checkbox"/> Yes</td> <td><input checked="" type="checkbox"/> No</td> </tr> </table>			Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If yes, ATTACH COPY OF TEXT Citation:	Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
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<b>(h) HEARING LOCATION:</b> Insurance Commissioner's Office Training Room 120 5000 Capitol Blvd. Tumwater, WA  Date: <u>June 10, 2003</u> Time: <u>2:00 p.m.</u>  Assistance for persons with disabilities: Contact <u>Lori Villaflores</u> by <u>June 6, 2003</u> TDD <u>(360) 664-3154</u> or <u>(360) 407-0198</u>		Submit written comments to: Kacy Scott PO Box 40255 Olympia, WA 98504-0255 Email: <a href="mailto:Kacys@oic.wa.gov">Kacys@oic.wa.gov</a> FAX (360) 586-3109 By: <u>June 6, 2003</u>												
NAME (TYPE OR PRINT) Mike Kreidler  SIGNATURE		DATE OF INTENDED ADOPTION: <u>June 11, 2003</u> <div style="background-color: #e0e0e0; padding: 10px; min-height: 150px;"> <b>CODE REVISER USE ONLY</b> </div>												
TITLE Insurance Commissioner	DATE 4/23/03													

(j) Short explanation of rule, its purpose, and anticipated effects:

Automobile total loss settlement is the single largest source of consumer inquiries and complaints received by the property and casualty section of the consumer advocacy division. The current WAC 284-30-390 is entitled "Standards for prompt, fair and equitable settlements applicable to automobile insurance" and addresses claims handling processes, valuation, repair, and total losses. Considerable agency staff time is spent working with consumer complaints through the existing regulation. Even more time is spent by the insurers themselves responding to the complaints whether received by the OIC or directly from their insureds. One goal of this rule-making is to make these processes more understandable to consumers. Consumers should have a greater awareness of their rights and clearer expectations of what may occur in the claims process. Another goal is to create more certainty in the standards for compliance for the industry representatives who administer the claims process. Another goal is a reduction in the time and cost spent by OIC and insurer staff in responding to consumer complaints due to the increased clarity and specific changes to the rules.

A previous CR-102 was filed in this rule-making process on January 22, 2003 and a previous public hearing held on February 26, 2003. The Commissioner received many comments and suggestions. The Commissioner decided that all parties would be best served by the ability to comment on a revised draft that incorporated many of the suggestions proposed by interested parties.

Does proposal change existing rules? ☒ YES ☐ NO

If yes, describe changes:

WAC 284-30-390 would be amended and new sections 284-30-3901 through 284-30-3916 would be created.

(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☒ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by writing to:

Kacy Scott  
PO Box 40255  
Olympia, WA 98504-0255  
Email: [Kacys@oic.wa.gov](mailto:Kacys@oic.wa.gov)  
Fax: 360-586-3109

☐ No. Explain why no statement was prepared

(l) Does RCW 34.05.328 apply to this rule adoption? ☒ Yes ☐ No

Please explain: This proposal is a significant legislative rule for the purposes of RCW 34.05.328.

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-390 (~~((Standards for prompt, fair and equitable settlements applicable to automobile insurance.))~~) Regulation of settlements of insurance claims relating to vehicles. ((The following standards apply to insurance claims relating to motorcycles and private passenger automobiles as defined in RCW 48.18.297:

(1) When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(a) The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fee incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by

(i) The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area. Any settlement offer which relies upon prices of automobiles advertised for sale in local newspapers may include only prices for automobiles verified by the insurer as being comparable in age and condition to the insured automobile; or

(ii) One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area. An insurer must accurately describe the age and condition of the insured automobile to the dealers surveyed and may use only price quotations for the retail selling price of a comparable automobile.

(c) When a first party automobile total loss is settled on a basis which deviates from the methods described in subsections (1)(a) and (1)(b) of this section, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

~~shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.~~

~~(3) Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop, or to obtain a temporary rental or loaner automobile.~~

~~(4) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense. An insurer shall keep first party claimants apprised of its efforts relative to subrogation claims.~~

~~(5) If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be itemized and shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and shall, upon request, furnish to the claimant the names of repair shops convenient to the claimant that will satisfactorily complete the repairs for the estimated cost, having in mind, particularly, the problems associated with the repair of unibody vehicles.~~

~~(6) In first party claim situations, if an insurer elects to exercise a contract right to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.~~

~~(7) In any claim situation, an insurer shall make a good faith effort to honor a claimant's request for repairs to be made in a specific repair shop of the claimant's choice, and shall not arbitrarily deny such request. A denial of such a request solely because of the repair shop's hourly rate is arbitrary if such rate does not result in a higher overall cost of repairs. The insurer shall make an appropriate notation in its claim file setting forth the reason it has rejected a claimant's request.~~

~~(8) Deductions for betterment and depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and depreciation shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount which the resale value of the vehicle is increased by the repair or replacement. Calculations for betterment, depreciation, and normal useful life must be included in the insurer's claim file.))~~ WAC 284-30-390 through

NEW SECTION

**WAC 284-30-3901 Definitions for settlement of vehicle claims.**

In addition to the definitions in WAC 284-30-320, the following definitions apply to WAC 284-30-3901 through 284-30-3915.

(1) "Actual cash value" means the cost to you to replace your vehicle with a comparable vehicle.

(2) "Comparable vehicle" means a vehicle that has been verified by the insurer to be the same make and model, same or newer year, similar body style, similar options and mileage as your vehicle and in as good or better overall condition as established by current data. To achieve comparability, any deductions or additions for options, mileage or condition can only be made as determined and measured within the principally garaged area.

(3) "Current data" means data no older than ninety days from the date of loss.

(4) "Principally garaged" means the zip code where the vehicle is normally kept.

(5) "Settlement" means when the payment is actually made to you and/or your lien holder.

NEW SECTION

**WAC 284-30-3902 When my vehicle is repairable, what can I expect from the insurer?** (1) The insurer must provide you a copy of the itemized estimate it is using as the basis for payment.

(2) Upon your request, the insurer must provide you names of repair shops within your principally garaged area that will satisfactorily complete the repairs for the estimated cost.

(3) The insurer cannot require you to travel unreasonably to:

(a) Inspect a replacement vehicle;

(b) Obtain a repair estimate;

(c) Have the vehicle repaired at a specific repair shop; or

(d) Obtain a temporary rental or loaner vehicle.

(4) Deductions for betterment and depreciation may be taken only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and depreciation are limited to the increase in the actual cash value of the vehicle caused by the replacement of the part, or the amount equal to the proportion that the expired

life of the part to be repaired or replaced bears to the normal useful life of that part, whichever is less.

(5) Your insurer may elect to exercise its right, under the terms of your insurance contract, to repair your vehicle and designate a specific repair shop for your vehicle repairs. In this case, the insurer shall restore your vehicle to its condition prior to the loss at no additional cost to you other than as stated in your policy.

#### NEW SECTION

**WAC 284-30-3903 Can I get my vehicle repaired at a shop of my choice?** (1) The insurer must make a good faith effort to honor your request for repairs to be made in a specific repair shop and cannot arbitrarily deny your request.

(2) A denial of your request solely because of the repair shop's hourly rate is arbitrary if the rate does not result in a higher overall cost of repairs.

(3) If the overall cost of repairs cannot be agreed upon, the insurer will:

(a) Provide you with the name of a reputable repair shop that can satisfactorily complete the repairs for the amount of their estimate; and

(b) Make an appropriate notation in its claim file setting forth the reason it has rejected your request.

(4) If you choose to take your vehicle to a repair facility in which the overall cost for a satisfactory repair is higher than the insurer's estimate, you may be liable for any additional amount above their estimate.

#### NEW SECTION

**WAC 284-30-3904 Will my insurer pursue collection of my deductible?** (1) Yes, if the company is pursuing collection of its interest, you may request they pursue collection of your deductible for you.

(2) The insurer will inform you of its efforts relative to collection of your deductible.

#### NEW SECTION

**WAC 284-30-3905 If my insurer collects my deductible back, will I recover the full amount of my deductible?** (1) At a minimum, recovery will be shared on a proportionate basis with your insurer.

(2) No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery, and then only for the pro rata share of the allocated loss adjustment expense.

#### NEW SECTION

**WAC 284-30-3906 If another party is responsible for my vehicle damage, can that party's insurer refuse to settle my vehicle damage and force me to use my own collision coverage?** When liability and damages are reasonably clear, another party's insurer cannot recommend that you make a claim under your own collision coverage solely to avoid paying the claim.

#### NEW SECTION

**WAC 284-30-3907 How can an insurer settle my vehicle total loss claim?** An insurer can adjust and settle vehicle total losses by one of the following methods:

(1) Replacing your vehicle: An insurer can settle your claim by offering to replace your vehicle with a comparable vehicle that is available for inspection within a reasonable distance from where your vehicle is principally garaged. An insurer must advise you by phone or in writing of their settlement offer. This communication must be documented in the claim file. If it is a phone call, the documentation must include the date, time, and name of the person in your household they spoke with.

(2) Cash settlement: An insurer can settle your claim by offering a cash settlement based on the actual cash value to purchase a comparable vehicle. Only vehicles identified as comparable may be used to arrive at the actual cash value. You

can request a copy of the "valuation report" that notes the information used to determine the amount of the cash settlement. The offer of a cash settlement must use one of the following methods:

(a) The actual cash value of a comparable vehicle based on current data obtained from the principally garaged area. If a comparable vehicle cannot be found within the principally garaged area, the search area may be expanded only in increasing circles of twenty-five mile increments until a comparable vehicle is identified.

(b) Quotations for the actual cash value of a comparable vehicle obtained from two or more licensed dealers located within the principally garaged area. If two or more licensed dealers cannot be found within the principally garaged area, the search area may be expanded only in increasing circles of twenty-five mile increments until two or more quotes for comparable vehicles are obtained.

(c) The actual cash value of two or more comparable vehicles advertised for sale in the local media if the advertisements are no older than ninety days. The vehicle must be located within the principally garaged area. If two or more comparable vehicles cannot be found within the principally garaged area, the search area may be expanded only in increasing circles of twenty-five mile increments until two or more comparable vehicles are identified.

(d) Any source for determining statistically valid actual cash values within your vehicle's principally garaged area that meets all of the following criteria:

(i) The source must give primary consideration to the values of vehicles in the zip code where your vehicle was principally garaged.

(ii) The source's data base must produce values for at least eighty-five percent of all makes and models for a minimum of fifteen years taking into account the values of all major options for such vehicles.

(iii) The source must produce actual cash values based on current data available from the principally garaged area. If comparable vehicles cannot be found within the principally garaged area, the search area may be expanded until comparable vehicles are identified to assure statistical validity.

(iv) The source must rely upon the actual cash value of comparable vehicles that are currently available or were available in the market place within ninety days from the date of loss.

(v) Any adjustments for betterment or depreciation must be in compliance with WAC 284-30-3908.

(vi) The source must provide a list of the comparable vehicles (minimum thirty) used to determine the actual cash value.



(e) When you and your insurer both agree, an evaluation that varies from the methods described in (a) through (d) of this subsection may be used. The determination of value must be supported by documentation. The insurer must take reasonable steps to validate that the value so determined is accurate and representative of what the actual cash value would be of a comparable vehicle in the principally garaged area.

(f) Insurers remain responsible for the accuracy of evaluations based on outside sources used to establish actual cash values.

(3) Appraisal: If you and your insurer fail to agree on the actual cash value of your vehicle and your policy has an appraisal provision, you or your insurer may request that the appraisal provision of your policy be used as a method to resolve disputes concerning the actual cash value.

(4) Applicable taxes, license fees, and other fees incidental to transfer of evidence of ownership must be added to the actual cash value.

#### NEW SECTION

**WAC 284-30-3908 Are there factors that may reduce my settlement?** Your settlement may be reduced by one of the following methods:

(1) Deductions are allowable for prior damage. The amount of deduction can be no greater than the decrease in actual cash value due to prior damage.

(2) When you retain your total loss vehicle, your insurer may deduct the salvage value from the actual cash value, including all applicable taxes and fees. The insurer must provide you with the name and address of a salvage dealer or dismantler who will purchase the salvage for the amount deducted with no additional charge. This option must be available for at least thirty days after receipt of the settlement. This option will not be available if, after settlement, the condition of the salvage has been changed.

(3) Any additions or deductions from the actual cash value must be measurable, discernible, itemized and specified as to dollar amounts.

NEW SECTION

**WAC 284-30-3909 If my vehicle is determined to be a total loss, can I keep it?** (1) If your claim is being handled by another person's liability insurer, you may negotiate to keep your vehicle.

(2) If your claim is being handled under your insurance policy, it will depend on the terms and conditions in your policy.

NEW SECTION

**WAC 284-30-3910 Can the insurer move my vehicle prior to settlement of the claim?** Yes, the insurer may move your vehicle with your consent. An insurer may seek to move your vehicle to eliminate additional storage costs. If you do not consent to move your vehicle, you may be held liable for those additional storage costs.

NEW SECTION

**WAC 284-30-3911 What information must be included in the insurer's valuation report?** The valuation report must include:

(1) All information collected during the initial inspection that sets forth the condition, equipment, and mileage of the vehicle;

(2) All information that the insurer used to arrive at the actual cash value of the vehicle;

(3) A list of the comparable vehicles used by the insurer to arrive at the actual cash value. This list must include:

(a) The source of the information used;

(b) The date of the information;

(c) The seller's telephone number;

(d) The asking price;

(e) The sold price, if the sold price is available and verified;

(f) The location of each vehicle at the time of the valuation.

(g) When an insurer uses a source for determining statistically valid actual cash values meeting the requirements of WAC 284-30-3907 (2)(d), the list required under this section must include a minimum of thirty comparable vehicles and give primary consideration to vehicles in the zip code where your vehicle was principally garaged.

Any supplemental or ancillary information must be clearly identified with a separate heading. Any weighing of identified vehicles to arrive at an average must be documented and explained.

#### NEW SECTION

**WAC 284-30-3912 What if I, as an insured, accept the settlement based on the insurer's valuation and cannot find a comparable vehicle within a reasonable distance of my vehicle's principally garaged area?** (1) When you accept the settlement, your insurer must provide you with written notice regarding reopening of your claim file.

(2) If you notify your insurer within thirty-five days of receipt of the settlement that you cannot purchase a comparable vehicle for the settlement amount and you located, but did not purchase a comparable vehicle in excess of the settlement amount, the insurer must reopen your claim file and either:

(a) Locate a comparable vehicle that is currently available for the settlement amount;

(b) Pay you the difference between the settlement amount before applicable deductions and the cost of the comparable vehicle or purchase the comparable vehicle for you; or

(c) If not previously utilized, conclude the loss settlement in the manner provided in the appraisal section of your insurance policy in force at the time of the loss.

(3) Your insurer is not required to reopen your claim file if:

(a) At the time of settlement, you were provided written notification of the availability and location of a specific and comparable vehicle that could have been purchased for the settlement amount; and

(b) You did not purchase the vehicle within thirty-five days of the receipt of the settlement.

#### NEW SECTION

**WAC 284-30-3913 What must the insurer do prior to the denial of storage and towing costs?** The insurer must:

(1) Advise you by phone or in writing before they stop payment for storage of your vehicle. This communication must be documented in the claim file. If it is a phone call, the documentation must include the date, time, name of the person in your household they spoke with, and specifics of the conversation;

(2) Provide reasonable time, in no event greater than five business days, for you to remove your vehicle from storage before stopping payment; and

(3) Pay any and all reasonable towing charges unless otherwise provided in your policy. You may use any towing company unless the insurer provides you with the name of a specific towing company before your vehicle is towed.

#### NEW SECTION

**WAC 284-30-3914 When I am dealing with someone else's insurer, what are my rights regarding a rental vehicle?** In vehicle property damage liability claims in which liability is reasonably clear, the insurer will negotiate the reasonable and necessary costs in direct proportion to the extent of its liability for the rental of another vehicle and may not require you to rent a vehicle to actually cover these costs.

#### NEW SECTION

**WAC 284-30-3915 What if the other person's insurer offers a flat rental amount per day, week, or month?** When the insurer offers a flat rental amount per day, week, or month, they must disclose to you where you can obtain a vehicle for the amount of its payment.

## NEW SECTION

**WAC 284-30-3916** In a total loss situation, what happens if I have a loan or lease on my vehicle and the outstanding balance exceeds the actual cash value of my vehicle? Unless you have purchased auto loan/lease gap coverage, you will be responsible for the difference between the actual cash value of your vehicle and the outstanding balance owing to the lessor or finance company if your vehicle is a total loss. For example, if your vehicle's actual cash value is \$15,000 but you owe \$20,000 to the lessor or finance company, you will be responsible for the extra \$5,000. The insurer is not required to pay the difference unless you have purchased specific coverage for it, subject to your policy's terms and conditions.